

E & R AMENDMENTS TO LB 947

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 "Section 1. (1) For mobile telecommunications service
4 provided and billed to a customer by a home service provider for
5 any billing period ending on or after August 1, 2002:

6 (a) Notwithstanding any other provision of law or any
7 local ordinance or resolution, such mobile telecommunications
8 service is deemed to be provided by the customer's home service
9 provider;

10 (b) All taxable charges for such mobile
11 telecommunications service shall be subject to tax by the state or
12 other taxing jurisdiction in this state whose territorial limits
13 encompass the customer's place of primary use regardless of where
14 the mobile telecommunications service originates, terminates, or
15 passes through; and

16 (c) No taxes, charges, or fees may be imposed on a
17 customer with a place of primary use outside this state.

18 (2) In accordance with the federal Mobile
19 Telecommunications Sourcing Act, as such act existed on the
20 effective date of this act, the Tax Commissioner may, but shall not
21 be required to:

22 (a) Provide or contract for a tax assignment data base
23 based upon standards identified in 4 U.S.C. 119, as such section
24 existed on the effective date of this act, with the following

1 conditions:

2 (i) If such data base is provided, a home service
3 provider shall be held harmless for any tax that otherwise would
4 result from any errors or omissions attributable to reliance on
5 such data base; or

6 (ii) If such data base is not provided, a home service
7 provider may rely on an enhanced zip code for identifying the
8 proper taxing jurisdictions and shall be held harmless for any tax
9 that otherwise would result from any errors or omissions
10 attributable to reliance on such enhanced zip code if the home
11 service provider identified the taxing jurisdiction through the
12 exercise of due diligence and complied with any procedures that may
13 be adopted by the Tax Commissioner. Any such procedure shall be in
14 accordance with 4 U.S.C. 120, as such section existed on the
15 effective date of this act; and

16 (b) Adopt procedures for correcting errors in the
17 assignment of primary use that are consistent with 4 U.S.C. 121, as
18 such section existed on the effective date of this act.

19 (3) If charges for mobile telecommunications service that
20 are not subject to tax are aggregated with and not separately
21 stated on the bill from charges that are subject to tax, the total
22 charge to the customer shall be subject to taxation unless the home
23 service provider can reasonably separate charges not subject to
24 taxation using the records of the home service provider that are
25 kept in the regular course of business.

26 (4) For purposes of this section:

27 (a) Customer means an individual, business, organization,

1 or other person contracting to receive mobile telecommunications
2 service from a home service provider. Customer does not include a
3 reseller of mobile telecommunications service or a serving carrier
4 under an arrangement to serve the customer outside the home service
5 provider's service area;

6 (b) Home service provider means a telecommunications
7 company as defined in section 86-1403 that has contracted with a
8 customer to provide mobile telecommunications service;

9 (c) Mobile telecommunications service means a wireless
10 communication service carried on between mobile stations or
11 receivers and land stations, and by mobile stations communicating
12 among themselves, and includes: (i) Both one-way and two-way
13 wireless communications services; (ii) a mobile service which
14 provides a regularly interacting group of base, mobile, portable,
15 and associated control and relay stations, whether on an
16 individual, cooperative, or multiple basis for private one-way or
17 two-way land mobile radio communications by eligible users over
18 designated areas of operation; and (iii) any personal
19 communications service;

20 (d) Place of primary use means the street address
21 representative of where the customer's use of mobile
22 telecommunications service primarily occurs. The place of primary
23 use must be the residential street address or the primary business
24 street address of the customer and must be within the service area
25 of the home service provider; and

26 (e) Tax means the sales taxes levied under sections
27 13-319, 77-2703, and 77-27,142, the surcharges levied under the

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1 Nebraska Telecommunications Universal Service Fund Act, the
2 Telecommunications Relay System Act, and sections 86-2201 to
3 86-2214, and any other tax levied against the customer based on the
4 amount charged to the customer. Tax does not mean an income tax,
5 property tax, franchise tax, or any other tax levied on the home
6 service provider that is not based on the amount charged to the
7 customer.

8 Sec. 2. Section 13-326, Revised Statutes Supplement,
9 2000, is amended to read:

10 13-326. (1) All relevant provisions of the Nebraska
11 Revenue Act of 1967, as amended, not inconsistent with sections
12 13-319, 13-324, and 13-325, shall govern transactions, proceedings,
13 and activities pursuant to any sales and use tax imposed by a
14 county.

15 (2) For the purposes of the sales and use tax imposed by
16 a county, all retail sales, rentals, and leases, as defined and
17 described in the Nebraska Revenue Act of 1967, are consummated:

18 (a) At the place where title, possession, or segregation
19 takes place, with the exception of sales or leases or rentals for
20 more than one year of motor vehicles, trailers, semitrailers, and
21 motorboats, if a purchaser takes possession of tangible personal
22 property within a county which has enacted a tax under section
23 13-319, regardless of the business location of the Nebraska
24 retailer;

25 (b) At the point of delivery of utility services and
26 community antenna television services or where such services are
27 provided, with the exception that (a) Nebraska intrastate message

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1 toll telephone and telegraph services, other than mobile
2 telecommunications service as described in section 1 of this act,
3 which are consummated in the county where the customer is normally
4 billed for such services and (b) such mobile telecommunications
5 service that originates and terminates in the same state shall be
6 consummated in the county where the customer has a place of primary
7 use;

8 (c) At the physical location of individual vending
9 machines; and

10 (d) At the place designated on the application for
11 registration for motor vehicles, trailers, semitrailers, and
12 motorboats sold or leased or rented for more than one year.

13 Sec. 3. Section 77-2701, Revised Statutes Supplement,
14 2001, is amended to read:

15 77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222
16 and section 1 of this act shall be known and may be cited as the
17 Nebraska Revenue Act of 1967.

18 Sec. 4. Section 77-2702.07, Revised Statutes Supplement,
19 2000, is amended to read:

20 77-2702.07. (1) Gross receipts shall mean the total
21 amount of the sale or lease or rental price, as the case may be, of
22 the retail sales of retailers valued in money whether received in
23 money or otherwise, without any deduction on account of any of the
24 following:

25 (a) The cost of property sold. In accordance with rules
26 and regulations adopted and promulgated by the Tax Commissioner, a
27 deduction may be taken if the retailer has purchased property for

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1 some purpose other than resale, has reimbursed his or her vendor
2 for tax which the vendor is required to pay to the state or has
3 paid the use tax with respect to the property, and has resold the
4 property prior to making any use of the property other than
5 retention, demonstration, or display while holding it for sale in
6 the regular course of business. If such a deduction is taken by
7 the retailer, no refund or credit will be allowed to his or her
8 vendor with respect to the sale of the property;

9 (b) The cost of the materials used, labor or service
10 costs, interest paid, losses, or any other expense;

11 (c) The cost of transportation of the property;

12 (d) The amount of any excise or property tax levied
13 against the property except as otherwise provided in the Nebraska
14 Revenue Act of 1967; or

15 (e) The amount charged for warranties, guarantees, or
16 maintenance agreements.

17 (2) Gross receipts of every person engaged as a public
18 utility specified in this subsection or as a community antenna
19 television service operator or any person involved in connecting
20 and installing services defined in subdivision (2)(a), (b), or (d)
21 of this section shall mean:

22 (a) In the furnishing of telephone communication service,
23 other than mobile telecommunications service as described in
24 section 1 of this act, the gross income received from furnishing
25 local exchange telephone service and intrastate message toll
26 telephone service. In the furnishing of mobile telecommunications
27 service as described in section 1 of this act, the gross income

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1 received from furnishing mobile telecommunications service that
2 originates and terminates in the same state to a customer with a
3 place of primary use in Nebraska. Gross receipts shall not mean
4 (i) the gross income, including division of revenue, settlements,
5 or carrier access charges received on or after January 1, 1984,
6 from the sale of a telephone communication service to a
7 communication service provider for purposes of furnishing telephone
8 communication service or (ii) the gross income attributable to
9 services rendered using a prepaid telephone calling arrangement.
10 For purposes of this subdivision, a prepaid telephone calling
11 arrangement shall mean the right to exclusively purchase
12 telecommunications service that are paid for in advance that
13 enables the origination of calls using an access number or
14 authorization code, whether manually or electronically dialed;
15 (b) In the furnishing of telegraph service, the gross
16 income received from the furnishing of intrastate telegraph
17 services;
18 (c) In the furnishing of gas, electricity, sewer, and
19 water service except water used for irrigation of agricultural
20 lands and manufacturing purposes, the gross income received from
21 the furnishing of such services upon billings or statements
22 rendered to consumers for such utility services; and
23 (d) In the furnishing of community antenna television
24 service, the gross income received from the furnishing of such
25 community antenna television service as regulated under sections
26 18-2201 to 18-2205 or 23-383 to 23-388.
27 Gross receipts shall also mean gross income received from

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1 the provision, installation, construction, servicing, or removal of
2 property used in conjunction with the furnishing, installing, or
3 connecting of any public utility services specified in subdivision
4 (2)(a) or (b) of this section or community antenna television
5 service specified in subdivision (2)(d) of this section. Gross
6 receipts shall not mean gross income received from telephone
7 directory advertising.

8 (3) Gross receipts of every person engaged in selling,
9 leasing, or otherwise providing intellectual or entertainment
10 property shall mean:

11 (a) In the furnishing of computer software, the gross
12 income received, including the charges for coding, punching, or
13 otherwise producing computer software and the charges for the
14 tapes, disks, punched cards, or other properties furnished by the
15 seller. Gross receipts shall not mean the amount charged for
16 training customers in the use of computer software if such amount
17 is separately stated and such separate statement is not used as a
18 means of avoiding imposition of the tax upon the actual sales price
19 of the computer software; and

20 (b) In the furnishing of videotapes, movie film,
21 satellite programming, satellite programming service, and satellite
22 television signal descrambling or decoding devices, the gross
23 income received from the license, franchise, or other method
24 establishing the charge except the gross income received from
25 videotape and film rentals, satellite programming, and satellite
26 programming service when the sales tax or the admission tax is
27 charged under the Nebraska Revenue Act of 1967 and except as

1 provided in section 77-2704.39.

2 (4) Gross receipts shall not include any of the
3 following:

4 (a) Cash discounts allowed and taken on sales;

5 (b) (i) Before January 1, 1997, the amount of any rebate
6 granted by a motor vehicle manufacturer or dealer at the time of
7 sale of the motor vehicle, which rebate functions as a discount
8 from the sales price of the motor vehicle; and

9 (ii) On and after January 1, 1997, the amount of any
10 rebate granted by a motor vehicle or motorboat manufacturer or
11 dealer at the time of sale of the motor vehicle or motorboat, which
12 rebate functions as a discount from the sales price of the motor
13 vehicle or motorboat;

14 (c) Sales price of property returned by customers when
15 the full sales price is refunded either in cash or credit;

16 (d) The amount charged for finance charges, carrying
17 charges, service charges, or interest from credit extended on sales
18 of property under contracts providing for deferred payments of the
19 purchase price if such charges are not used as a means of avoiding
20 imposition of the tax upon the actual sales price of the property;

21 (e) The value of property taken by a seller in trade as
22 all or a part of the consideration for a sale of property of any
23 kind or nature;

24 (f) (i) Before January 1, 1997, the value of a motor
25 vehicle taken by any person in trade as all or a part of the
26 consideration for a sale of another motor vehicle; and

27 (ii) On and after January 1, 1997, the value of a motor

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1 vehicle or motorboat taken by any person in trade as all or a part
2 of the consideration for a sale of another motor vehicle or
3 motorboat;

4 (g) Receipts from conditional sale contracts, installment
5 sale contracts, rentals, and leases executed in writing prior to
6 June 1, 1967, and with delivery of the property prior to June 1,
7 1967, if such conditional sale contracts, installment sale
8 contracts, rentals, or leases are for a fixed price and are not
9 subject to negotiation or alteration; or

10 (h) Except as provided in subsection (2) of this section,
11 the amount charged for labor or services rendered in installing or
12 applying the property sold if such amount is separately stated and
13 such separate statement is not used as a means of avoiding
14 imposition of the tax upon the actual sales price of the property.

15 Sec. 5. Section 77-27,147, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 77-27,147. All relevant provisions of the Nebraska
18 Revenue Act of 1967, as amended from time to time, and not
19 inconsistent with the Local Option Revenue Act, shall govern
20 transactions, proceedings, and activities pursuant to any tax
21 imposed under the Local Option Revenue Act.

22 For the purposes of the Local Option Revenue Act, all
23 retail sales, rentals, and leases, as defined and described in the
24 Nebraska Revenue Act of 1967, are consummated:

25 (1) At the place where title, possession, or segregation
26 takes place, with the exception of sales or leases or rentals for
27 more than one year of motor vehicles, trailers, semitrailers, and

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1 commencing January 1, 1997, motorboats, if a purchaser takes
2 possession of tangible personal property within a municipality
3 which has enacted a tax under the Local Option Revenue Act,
4 regardless of the business location of the Nebraska retailer;

5 (2) At the point of delivery of utility services and
6 community antenna television services or where such services are
7 provided, with the exception that (a) Nebraska intrastate message
8 toll telephone and telegraph services, other than mobile
9 telecommunications service as described in section 1 of this act,
10 shall be consummated in the municipality where the customer is
11 normally billed for such service and (b) such mobile
12 telecommunications service that originates and terminates in the
13 same state shall be consummated in the municipality where the
14 customer has a place of primary use;

15 (3) At the physical location of individual vending
16 machines; and

17 (4) At the place designated on the application for
18 registration for motor vehicles, trailers, semitrailers, and
19 commencing January 1, 1997, motorboats sold or leased or rented for
20 more than one year.

21 Sec. 6. Original section 77-27,147, Reissue Revised
22 Statutes of Nebraska, sections 13-326 and 77-2702.07, Revised
23 Statutes Supplement, 2000, and section 77-2701, Revised Statutes
24 Supplement, 2001, are repealed."